

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**In Re: Troy Barton**

**Debtor**

**Chapter 13: 22-13334elf**

**Sybil Davis Individually and as Executrix**

**Adv. No. 23-**

**Of the Estate of William James Davis**

**Plaintiff**

**Vs.**

**Troy Barton**

**Defendant**

**COMPLAINT OBJECTING TO DISCHARGE  
PURSUANT TO 11 U.S.C. 523(a)(2), (a)(4) and (a)(6)**

Plaintiff, through her and its counsel, Michael A. Cataldo, Esquire hereby sets forth the following.

In support of this Adversary Complaint Objecting to Discharge under 11 U.S.C. 523 (a)(2), (a)(4) and (a)(6)

**JURISDICTION VENUE AND PARTIES**

1. Debtor filed for protection under Chapter 13 on December 13, 2022.
2. Debtor pursuant to the petition resides at 3707 Mimi Circle, Philadelphia, Pa 19131-2820.
3. Plaintiff resides at 1821 Spera Lane, East Norriton, Pa 19403.
4. This Court by virtue of the Chapter 13 filing by the Debtor and 11 U.S.C. 523(a)(2),(a)(4) and (a)(6) has jurisdiction of this matte pursuant to and under Rule 7001 of the Federal Rules of Bankruptcy Procedure.

5. Venue of this adversary proceeding is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. 1409(a).

6. This court has jurisdiction over this adversary action pursuant to 28U.S.C. 157 and 1334. This adversary Action is a core proceeding pursuant to 28U.S.C. 157(b)(2)(A)(H),(O).

#### **STATEMENT OF FACTS**

7. The Statement of Financial Affairs lists the Civil Action in the Estate of William James Davis that was pending in the Court of Chancery in the State of Delaware. A true and correct copy of the Pre-Inquisition Hearing Memorandum and Exhibits filed in the Court of Chancery of the State of Delaware on September 23, 2022 is attached as Exhibit A. A copy of the Supplement to Pre-Inquisition Hearing Memorandum and Exhibits filed on September 30, 2022 is attached as Exhibit B and both exhibits are incorporated by reference.
8. Schedule F does not list the Estate of William James Davis or Sybil Davis as a creditor.
9. Kenneth E. West is the interim Chapter 13 Trustee.

#### **COUNT I OBJECTION TO DISCHARGE UNDER 11 U.S.C. 523 (a) (4)**

10. Plaintiff hereby incorporates all facts and averments contained in paragraphs 1-9 by the adversary complaint by reference as if more fully set forth herein at length.
11. The bankruptcy code under 11 U.S.C. 523 (a) (4) excepts from discharge a debt incurred by “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny”.
12. Defendant has fraudulently and intentionally misappropriated assets of the Estate of William James Davis while in a fiduciary role as successor administrator of the estate including actions taken prior thereto under the Delaware Limited Power of Attorney Act or under common law prior to the execution of the Power of Attorney

13. Debtor in the Chancery Court in 2019 listed a total probate and non-probate estate of \$905,384.94 yet only \$115,014.83 in liquid funds was turned over.

14. Debtor in 2018 purchased 2 separate properties with funds believed to have been misappropriated and fraudulently taken from the estate. In fact, debtor testified at his 341 that over \$200,000 was from his mother and that the funds were taken from the estate. Debtor avers that Defendant committed the fraud in his official fiduciary capacity and prior thereto informally acting on behalf of Etta Barton, the prior estate administrator. Regardless, as decided February 22, 2023 by the Supreme Court in *Bartenwerfer v Buckley*, the unlawfully and fraudulently obtained funds or assets and court decision turns on how those monies were obtained and not by who committed fraud to obtain it.

**WHEREFORE**, the Plaintiffs respectfully request judgment in her and its favor and against the Defendant in accordance with 11 U.S.C. 523(a)(4) and find the debt to Plaintiff not discharged and award attorney fees and damages or any other such relief that this court deems just.

**COUNT II OBJECTION TO DISCHARGE UNDER 11 U.S.C. 523 (a) (6)**

15. Plaintiff hereby incorporates all facts and averments contained in paragraphs 1-9 by the adversary complaint by reference as if more fully set forth herein at length.

**16.** The bankruptcy code under 11 U.S.C. 523 (a) (6) excepts from discharge a debt incurred by “willful and malicious injury by the debtor to another entity or to the property or another entity”.

**17.** The fraudulent activity set forth herein was willful and malicious and to great detriment to the Estate and Plaintiff Sybil Davis a beneficiary of the estate causing her great damage.

**WHEREFORE**, the Plaintiffs respectfully request judgment in her and its favor and against the Defendant in accordance with 11 U.S.C. 523(a)(6) and find the debt to Plaintiff not discharged and award attorney fees and damages or any other such relief that this court deems just.

**COUNT III OBJECTION TO DISCHARGE UNDER 11 U.S.C. 523 (a) (2)**

18. Plaintiff hereby incorporates all facts and averments contained in paragraphs 1-17 by the adversary complaint by reference as if more fully set forth herein at length.

19. This exception to discharge, in part, includes “money, property ...to the extent obtained by false pretenses, a false representation, or actual fraud... “

**WHEREFORE**, the Plaintiffs respectfully request judgment in her and its favor and against the Defendant in accordance with 11 U.S.C. 523(a)(2) and find the debt to Plaintiff not discharged and award attorney fees and damages or any other such relief that this court deems just.

Respectfully Submitted,

Gellert, Scali, Busenkell& Brown, LLC

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